IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3128 OF 2001
IN
SUIT NO.4443 OF 2001

Smt.Rukkaiyabi Shaikh Abdul Gafoor ....Plaintiff
V/s.
Mrs.Kaniz Fatima Shaikh Akhtar & Ors. ....Defendants

Mr.Khandeparkar with Mr.Chanawala i/b Mr.R.B. Jaiswal for the Plaintiff.
Mr.Y.E. Mooman for Defendant No.1.
Mr.Kedar Wagle i/b Sonal Gokhale for Defendant No.2.
Mr.A.G. Toraskar for Defendant No.3.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH NOVEMBER, 2005.

P.C. :

1. The suit is filed for a declaration of the rights of the parties in the estate of the deceased Hawabi. The original Plaintiff, and Defendant Nos.1 and 2 are sisters. Defendant Nos.3 and 4 are their brothers. The Plaintiffs claim under a Will of the deceased dated 3.11.1989. According to Defendant No.1, that Will was revoked by a writing dated 14th May, 1999. Further the case of Defendant No.1 is that by two Gift Deeds, the deceased gifted two buildings which are fully tenanted in favour of Defendant No.1.

2. It is not necessary to go into the merits of

the case regarding the rival contentions. The properties are required to be protected pending hearing and final disposal of the suit.

3. Mr.Mooman, the learned counsel appearing on behalf of Defendant No.1 undertakes that pending hearing and final disposal of the suit, Defendant No.1 will not sell, transfer, mortgage, alienate or create any third party right, title and/or interest in, to, upon or in respect of the said buildings. Defendant No.1 further agrees and undertakes not to transfer the tenancy rights in respect of any part of the said buildings. Defendant No.1 is entitled to accept the surrender of tenancy in respect of the buildings but shall not be entitled to even deal with in any manner such premises, without the leave of the Court.

4. Defendant No.1 further agrees and undertakes to file a list of the tenants in respect of the said building as on the date of the ad-interm order dated 8.1.2002. Defendant No.1 shall also disclose on oath change in tenancies, if any, upto date. On behalf of Defendant No.1, the statement is made that there has been no change of tenancy after such order.

5. Defendant No.1 further undertakes to give

inspection of the documents pertaining to the suit properties to all other parties to the suit and their advocates at 5.30 p.m. on 22.11.2005 in the chamber of advocate for Defendant No.1. If the inspection remains incomplete, Defendant No.1 shall continue to give inspection on each succeeding day at 5.30 p.m.

6. I must clarify that I have not considered the application for appointment of Court Receiver in this Notice of Motion, in view of the aforesaid statements which are accepted.

7. After the receipt of the aforesaid particulars and the inspection, the Plaintiff will be at liberty to adopt appropriate proceedings including the proceedings for contempt of Court and for an appointment of the Court Receiver.

8. The learned counsel appearing on behalf of Defendant Nos.1 to 3 waive service of writ of summons.

9. The Notice of Motion is accordingly disposed of.